Crl.A. 225/2001
BEFORE
THE HON'BLE MR. JUSTICE D.BISWAS
THE HON'BLE MR. JUSTICE A.HAZARIKA

D.Biswas, J

The learned Sessions Judge, Tinsukia on conclusion of trial in Sessions Case No. 47(T) of 1999 convicted the appellants Ragha Karmakar, Jiten Karmakar and Rajesh Karmakar under Section 302/34 IPC and sentenced them to imprisonment for life and to pay a fine of Rs. 500/-, in default to imprisonment for further two months each.

2. P.W.3 Balendra Maran lodged an ejahar before the Officer-in-Charge, Digboi Police Station on 20.11.98 informing that on that day around 10 a.m. when his brother Kanchan Maran went to Balijan Gaon in order to witness a cock fight, an altercation took place between him and some people. Around 3 p.m. he found his brother killed and left by the side of National Highway near Shri Timber Wood Products at Village Gopanari by some unknown men after hacking him in the neck with sharp weapon.

3. On receipt of the aforesaid ejahar, Digboi P.S. Case No.215/98 under Section 302 IPC was registered. The police after registration of the case took up investigation, visited the place of occurrence, seized the incriminating materials, recorded the statement of the witnesses and on completion of investigation, submitted chargesheet against the appellants under Section 302 IPC.

4. On commitment by the learned Magistrate, the learned Sessions Judge framed charge against the appellants under Section 302/34 IPC. The charges were read over and explained to the appellants, to which they pleaded not guilty and claimed to be tried. From the trend in the cross-examination as well as the answers given by the appellants in course of their examination under Section 313 CrPC, the defence case appears to be of complete denial.

5. The learned Sessions Judge examined as many as seven witnesses produced by the prosecution and two defence witnesses. After examination of the accused-appellants under Section 313 CrPC and hearing the argument, the impugned judgment was pronounced convicting and sentencing the appellants as mentioned hereinbefore.

6. P.W.6 Dr. MN Gogoi performed the post mortem examination on the dead body of Kanchan Maran. The injuries found by him are as follows :

Injuries : 1. Incised wound in the lower part of the left side of the neck of size 12 x 2 cm cutting the skin, muscles, blood vessels, nerves, trachea oesophagus completely and haemorrhage from it.

Cranium and spinal canal :- Scalp : Incised wound in the right parietal region of the scalp of size 7 x 1 cm bone cut.
Skull : Bone cut under the wound No.1 of length 7 cm.
Brain and spinal cord : Healthy.

Thorax :- Trachea cut completely under the wound No.1.
Abdomen : Oesophagus completely cut under the wound No.1. Stomach : Healthy and empty, others are healthy. .

In the opinion of the doctor, the death was due to shock and haemorrhage resulting from the ante mortem injuries sustained by the deceased. The

doctor further opined that injury No. 1 is individually sufficient to cause death. The evidence of the Medical Officer read with the inquest report (Exhibit-2) conclusively prove that Kanchan Maran died of the ante mortem injuries sustained by him.

7. P.W.1 Naren Garh is a distant relative of deceased Kanchan Maran. He stated that on 12th November about two years back around 2.30 p.m. while he was talking to P.W.2 Sivajee Sah on their way to a shop, deceased Kanchan Maran also joined them. At that time, Rajesh, Mangra, Ragha and Jiten came there armed with axe and dao. Rajesh was in possession of an axe and Mangra possessed a dao. Rajesh hit Kanchan from behind. Kanchan fell down on the road. After that all the four accused persons dragged him to the side of the road. Accused Mangra dealt a cut blow with the dao on Kanchan's neck and waist. The accused persons drove the witness and Sivajee away from the place of occurrence. The witness then reported the matter to the inmates of Kanchan's house.

8. P.W.2 Sivajee Shah in full corroboration to the statement made by P.W.1 stated that he was sitting by the side of the road at a little distance from his house around 2/2.30 p.m. P.W.1 Naren came and they were talking. Deceased Kanchan also joined them. Then the accused persons came there. Rajesh hit Kanchan from behind. Kanchan fell down. After that all the accused persons dragged Kanchan to the side of the road and killed him by hacking with a dao. This witness along with P.W.1 fled away from the place of occurrence out of fear. The witness further stated that the accused persons also went to his house and threatened him of setting fire to his house if he gives evidence against them.

9. P.W.1 and 2 have been cross-examined at length, but nothing adverse to the prosecution could be elicited out of them. Rather, they have reiterated their substantive evidence against the accused persons as spelt out in course of their examination-in-chief.

10. P.W.3 Balendra Maran is the elder brother of the deceased. He lodged the ejahar having coming to know about the occurrence. Initially he had no knowledge as to who had assaulted his brother. Exhibit-1 is the ejahar wherein he stated that some unknown persons had killed his brother. This witness further stated that police arrested accused Ragha and Jiten and seized an axe. Exhibit-2 is the inquest report and Exhibit-2(1) is the signature of this witness. The witness further stated that on the following day, P.W.1 Naren told him that when he and P.W.2 Sivajee were engaged in a conversation deceased Kanchan joined them and then accused Ragha, Jiten, Rajesh and Mongra killed Kanchan. He was further told that Rajesh had first attacked Kanch with an axe and, thereafter, all the accused persons followed him. The evidence of P.W.3 is simple and clear. He is not an eye witness to the occurrence but on the following day he came to know about the occurrence from P.W.1 and 2. The evidence of P.W.1 and 2 as reflected above in clear terms establish the prosecution charge against the accused persons.

11. P.W.4 Joynanda Shah supports P.W.3 in so far the information about the occurrence is concerned. P.W.4 stated that having come to know that a dead body was lying near the house of P.W.5 Ram Sagarat Shah, he went there and saw the dead body of Kanchan. He reported the matter to P.W.3 Balendra Maran. Till then they had no knowledge as to who had killed Kanchan. The evidence of this witness clearly suggest that they got the information about involvement of the accused persons from P.W.1 and 2 on the following day.

12. We have also examined the statement of the accused persons recorded by the learned Sessions Judge under Section 313 CrP.C. All the incriminating evidence against the accused persons have been put to them and we do not find any infirmity in their statement. We have also considered the evidence of D.W.1 Apin Karmakar and D.W. Banka Karmakar. The evidence of these two witnesses do not throw any light for or against the prosecution. Enmity sought to be brought out

is too remote to be connected with the alleged offence. The evidence of D.W.1 and 2 in no way have any overriding effect on the evidence of P.W.1,2,3 and 4.

13. In our considered opinion, the judgment under appeal calls for no interference.

14. In the result, the appeal is dismissed.

15. The learned amicus curiae be paid a sum of Rs. 3,000/- as fees for rendering assistance to the Court.